



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-31

FACTS:

You are currently employed by the ABC Housing Authority (Authority) as a leased housing inspector.^{1/} Apartments in the leased housing rental assistance program are inspected on an annual basis to ensure compliance with the building and sanitary codes.

You have recently purchased a two-family house. The property is being managed by your daughter. Your property was part of the Authority's leased housing program.^{2/} You did not inspect your own property, nor did you have any influence on the outcome of any inspection. Also, all rent payments are handled by your agent.

QUESTION:

Does G.L. c. 268A permit you to receive housing assistance payments from the Authority made on behalf of an eligible tenant pursuant to the Authority's leased housing program?

ANSWER:

Yes.

DISCUSSION:

As an inspector with the Authority, you are a municipal employee^{3/} for purposes of the conflict of interest law. G.L. c. 121B, §7.

Section 20

Section 20 prohibits a municipal employee from having a financial interest directly or indirectly in a contract with a municipal agency of the same city or town unless an exemption applies.

Because you would be receiving rental payments which are subsidized through the Authority's leased housing program, you would be deemed to have a financial interest in a contract with the same municipal agency by which you are employed.

Section 20, however, contains an exemption which may apply to your situation. Section 20(h) provides that the prohibitions of this section shall not apply:

to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

The sole issue which we must address is whether as an employee of the Authority, you have responsibility for the administration of the leased housing subsidy program.

We conclude that in your position as an inspector, you do not have "responsibility for the administration" of the Authority's leased housing subsidy program. We recognize that you do in fact play a role in the subsidy program. Nevertheless, we believe that the exemption was not designed to exclude all employees of a housing

authority, particularly not those employees who have very limited participation in the authority's subsidy programs. Rather, we conclude that a housing authority employee would have to be in a position to make or influence determinations regarding an individual's receipt of a rental subsidy in order to have responsibility for the program.

The legislative history of this exemption appears to support our conclusion. In 1985, the Legislature considered a bill (House No. 1564) proposed by the Commission, which set forth an exemption allowing a municipal employee to receive housing assistance payments on behalf of an eligible tenant, provided that the municipal employee did not participate in or have official responsibility for the activities of the local housing authority. This exemption, which would have effectively barred most housing authority employees from renting property to subsidy recipients, was not enacted by the Legislature. In 1987, the §20(h) exemption in its present form was passed by the Legislature and became part of the conflict of interest law. The present exemption appears to expand the availability of the exemption because only those housing authority employees who have "responsibility for the administration" of the subsidy program are now restricted from receiving subsidized rental payments. We therefore find our interpretation justified in light of the fact that the exemption as finally approved by the Legislature seems to reflect an intention to limit applicability of the exemption only in relatively narrow circumstances.

In summary, we find that as an inspector for the Authority, you will qualify for the exemption provided by §20(h) and therefore your receipt of rental income pursuant to the Authority's leased housing program will not violate §20.^{4/}

Section 23

Under §23(b)(3) you are prohibited from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can unduly enjoy your favor in the performance of your official duties. However, this so-called appearance of a conflict of interest may be overcome if you make a public written disclosure of the circumstances leading to the appearance. An appearance of a conflict of interest will result from the fact that you work within the leased housing program in addition to owning property which was part of that program (and for which you will receive subsidized rental payments). You must therefore file with your appointing authority a written disclosure of your ownership of the property in order to dispel any appearance of a conflict of interest.

Date Authorized: October 8, 1992

^{1/}As a leased housing inspector, your role in the subsidy program is limited to conducting on-site inspections (for code violations) of rental units. Your inspection reports are submitted to a supervisor. Furthermore, your inspection position in no way involves you in the financial structure or management of the subsidy program. For example, you inform us that you have no knowledge of the fair market rental values of the apartments which you inspect.

^{2/}Your daughter has informed us that your rental property will no longer be part of the Authority's program. This opinion is nevertheless relevant to your ability to collect subsidy payments for the period during which your property was a part of the leased housing program. In other words, the subsidy payments in question arise from tenants who leased your property and were eligible for a subsidy pursuant to the Authority's leased housing program.

^{3/}"Municipal employee," a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution. G.L. c. 268A, §1(g).

^{4/}If your property were to remain in the Authority's subsidy program, §19 would prohibit you from participating as an inspector with regard to your property. Additionally, you could not be involved in directing others nor could you participate in your official capacity in any dispute before the Authority which concerned your property. *See In re Cellucci*, 1988 SEC 346; *aff'd*. Superior Court No. 88-3743 (Suffolk, March 10, 1992), *appeal docketed* C.A. No. 92-P-887, June 29, 1992. Because you did not participate in nor have dealings with the Authority concerning your property and because your property will no longer be a part of the Authority's leased housing program, an issue under §19 will not be raised.